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No. 774

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1961

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HARRIS STRUCTURAL STEEL COMPANY, INC.,
*Petitioner.*

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, LOCAL 3682, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

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## BRIEF FOR RESPONDENTS IN OPPOSITION

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This case involves the very issues which were recently resolved by this Court in *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U. S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574 (1960); and *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960).

The controlling facts can be stated simply. For many years, the petitioner (hereinafter called the company) had paid a Christmas bonus to its employees, who are represented in collective bargaining by the respondent United Steelworkers of America (hereinafter called the union). Prior to 1960, this bonus had been calculated in accordance with a specific formula, based on the wage rates embodied in the collective bargaining agreement in effect between the parties. In 1960, the company unilaterally cut the bonus

in half. The union then filed and processed a "grievance" under Article VII of the current collective bargaining agreement. Article VII begins:

> "Should differences arise between the Company and the Union or between the Company and any of its employees as to the meaning and application of the provisions of this agreement or as to any question relating to the wages, hours of work and other conditions of employment of any employee there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle them promptly and in accordance with the provisions of this agreement and in the manner hereinafter set forth."

This article then provides for a series of "steps" to be followed by the parties in an effort to resolve their differences, and provides as a final step that:

> "In the event the dispute shall not have been satisfactorily settled, the matter shall be appealed to the American Arbitration Association. The final decision of the Arbitrator designated by the said Association and accepted by the Company and the Union shall be binding."

When the dispute over the Christmas bonus was not settled, the union submitted the matter to the American Arbitration Association. The company then brought this action to enjoin the arbitration proceeding, and the union filed a counter-claim, asking that the court order the company to submit the dispute to arbitration.

None of these facts is disputed. What is disputed is whether the Christmas bonus has been paid by the company "as a humanitarian gesture and in the spirit of the season," as it contends (Petition, p. 4), or whether the company was under an obligation to pay the same bonus as it had in the past because, as the union contends, "it was always under-

stood to be part and parcel of the wage structure of the employees governed by and under the said collective bargaining agreement" (R. 19a). Evidence tending to support each side of this dispute was contained in the affidavits submitted by the parties in support of their respective motions for summary judgment. The company's affidavits were to the effect that the union had on several occasions in the past sought to have the Christmas payment explicitly included in the "Rates of Pay" portion of the agreement, but that this had always been resisted by the company; and that the parties did not consider the payments to be a part of the agreement (R. 36a-46a). These affidavits were contradicted by an affidavit of the Union, which averred that although the Christmas plan was not expressly included in the agreements it "was always understood to be part and parcel of the wage structure of the employees governed by and under the said collective bargaining agreement." (R. 30a. see R. 18a-19a).

Since the issue before the court was not whether the company was obligated to pay the bonus, but whether it was obligated to submit that question to arbitration, the district court granted summary judgment for the union, and the Court of Appeals affirmed. Both courts relied on the decisions of this Court in the *United Steelworkers* cases, *supra*, holding that the merits of a grievance have nothing whatever to do with the question of whether that grievance is arbitrable. The essence of the decision below is contained in the following excerpt from the Court of Appeals' opinion:

> "*Five points are* very clear: first, the Company recognizes the Union as the exclusive representative of the employees in the bargaining unit in respect to rates of pay and wages; second, the issue of bonus payments is not specifically excluded from the grievance provisions of the collective bargaining agreement; third, the grievance and arbitration article of the agreement expressly

includes any question relating to wages, in addition to 'differences . . . as to the meaning and application of the provisions of this agreement'; fourth, the sums granted, whether given or paid, to the employees at or near the Christmas season, were estimated in terms of wages; and, fifth, the agreement contains a no-strike provision.

"It follows that this case is ruled, as the court below correctly indicated, by Textile Workers v. Lincoln Mills, 353 U. S. 448 (1957) and by United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U. S. 574, 578 (1960) . . ." (Petition, pp. 4a-5a).

## ARGUMENT

1. The question which the petitioner asks this Court to review by writ of certiorari is whether the dispute of fact reflected in the affidavits submitted by the parties was such that summary judgment should not have been granted. Even if this were a substantial question, it is doubtful whether it is the sort of question which warrants review by this Court. But, in any event, it is clear that, although certain facts were in dispute, there was "no genuine issue as to any *material* fact" Fed. R. Civ. Proc. 56(c).

The basic dispute between the parties which is reflected in the affidavits is whether the company had paid the Christmas bonus gratuitously or whether the bonus was a binding obligation as "a part of the wage structure." This is the dispute which the arbitrator must resolve. It has nothing to do with the only question which was before the court—whether, under the arbitration clause of the collective bargaining agreement, the company was obligated to submit the dispute to arbitration.

In granting summary judgment, the court below did no more than heed the admonition of this Court in the three *United Steelworkers* cases that the courts should not attempt

to resolve the merits of industrial grievances under the guise of determining whether they are arbitrable. As this Court stated in *Warrior & Gulf*, "the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provisions of a labor agreement, even through the back door of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator." 363 U. S. at 585. On this basis, the Court in *Warrior & Gulf* held that a grievance concerning the contracting out of work was arbitrable despite the district court's finding that the union had unsuccessfully attempted in the past to include in its collective bargaining agreement a prohibition on contracting-out.

In the light of *Warrior & Gulf*, the company's contention here that summary judgment should have been denied on the strength of affidavits tending to show that the union had unsuccessfully attempted to include the Christmas bonuses in the collective bargaining agreement borders on the frivolous. The arbitration provision in this case is even broader than that in *Warrior & Gulf*. It includes not only all disputes "as to the meaning and application of the provisions of the agreement" but also all disputes "as to any question relating to the wages, hours of work and other conditions of employment of any employee." Moreover, the arbitration provision in this case contains no exclusion clause whatever; the provision in *Warrior & Gulf* excluded "matters which are strictly a function of management." Plainly, the petitioner here, despite its protestations to the contrary, is simply seeking to relitigate questions which have already been decided by this Court.

2. While contending on the one hand that the court below erred in granting summary judgment without trying the issue of fact which pertains to the merits of the union's grievance, the company complains on the other hand that the court erroneously decided the merits of the grievance. Of course, the court did no such thing. Indeed, the court spe-

cifically avoided deciding whether the Christmas bonus was "given or paid" (Petition, p. 4a). It did decide, as it was required to do, that the dispute concerning the Christmas bonus was a dispute "relating to wages" within the meaning of the arbitration clause of the agreement. Though the company apparently believes that it follows necessarily from this decision that the bonus was a binding obligation and was not a mere gratuity, that issue was not before the court, and the court did not so hold.

## CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted.

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